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IN THE

Supreme Court of the United States

October Term, 1961.

No. 709.

B. NATHANIEL RICHTER and ELWOOD S. LEVY,
Petitioners,

v.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1961.

No.

B. NATHANIEL RICHTER AND ELWOOD S. LEVY,
Petitioners,

v.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States:

A. The Opinion Below.

The opinion of the United States District Court for the Eastern District of Pennsylvania is reported at 190 F. Supp. 159 (E. D. Pa. 1960). The opinion of the United States Court of Appeals for the Third Circuit is reported at — F. 2d — (3rd Cir. 1961), and is appended hereto at page 13.

B. Grounds Upon Which Jurisdiction of This Court Is Invoked.

1. The judgment of the United States Court of Appeals for the Third Circuit sought to be reviewed was entered on November 16, 1961.

2. There was no order respecting a rehearing or the granting of an extension of time to file this petition.

3. The statutory provision conferring jurisdiction on this Court to review the judgment in question by Writ of Certiorari is 28 U. S. C. Section 1254(1).

C. Questions Presented for Review.

1. Where the services of attorneys retained by an injured railroad company employee result in the recovery of a sum of money as damages from the employer railroad company under the provisions of the Employers' Liability Act, and where by reason of the provisions of § 12 of the Railroad Unemployment Insurance Act a portion of such recovery is paid over to the Railroad Retirement Board in satisfaction of its subrogation interest, does the Tucker Act, 28 U. S. C. § 1346, vest jurisdiction in the United States District Court to adjudicate a suit brought by such attorneys against the United States wherein it is claimed that a portion of said payment to the Railroad Retirement Board was made by reason of a misinterpretation of the provisions of the Railroad Unemployment Insurance Act and should properly have been paid to the employee's attorneys who were responsible for creating such fund which benefited the United States?

2. Where the services of attorneys retained by an injured railroad company employee result in the recovery of a sum of money as damages from the employer railroad company under the provisions of the Employers' Liability Act and where by reason of the provisions of § 12 of the

Railroad Unemployment Insurance Act a portion of such recovery is paid over to the Railroad Retirement Board, are such attorneys entitled to recover from the United States a reasonable attorneys' fee out of such fund paid to the Railroad Retirement Board for services rendered by the attorneys in creating the fund for the benefit of the United States?

D. Statutes Involved.

Plaintiffs seek to base jurisdiction upon the Tucker Act as codified in § 1346 of the Judicial Code, 62 STAT. 933, 28 U. S. C. § 1346 (1958), which provides in part that,

> **"(a) The Districts Courts shall have original jurisdiction, concurrent with the Court of Claims, of:**
>
> **(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."**

In remitting the settlement consideration to the plaintiffs who as attorneys represented the railroad employee in the litigation under the Federal Employers' Liability Act, the railroad withheld a sum of money and paid it over to the Railroad Retirement Board pursuant to a lien filed with the railroad by the Board under subsection (o) of § 12 of the Railroad Unemployment Insurance Act of June 25, 1938, c. 680, 52 STAT. 1107, as added by § 323 of the Act of July 31, 1946, c. 709, 60 STAT. 739, 740; 45 U. S. C. § 362(o) which provides:

> **"Benefits payable to an employee with respect to days of sickness shall be payable regardless of the**

liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."

E. Statement of Case.

This is a civil action brought under the provisions of the Tucker Act, 28 U. S. C. § 1346(a)(2) against the United States for recovery of a portion of certain funds which Plaintiffs allege were paid to an agency of the United States by reason of a misinterpretation of an Act of Congress.

Plaintiffs represented, on a contingent fee basis, one Peter J. Urban, an employee of the Pennsylvania Railroad, in a proceeding against the Railroad under the Federal Employers' Liability Act. In this suit for damages arising out of injuries sustained by Urban in the course of his employment by the Railroad Plaintiffs were responsible for the recovery from the Railroad of the gross sum of $16,800.00. Prior to this recovery the Railroad Retirement Board had paid Urban $2,210.00 in benefits under the Railroad Unemployment Insurance Act. By reason of an interpretation of the provisions of Section 12 of the Railroad Unemployment Insurance Act—an interpretation that Plaintiffs contend was in error—the full sum of $2,210.00 was deducted by the Railroad from the gross recovery of $16,800.00 prior

to disbursement of the balance of the recovery to the employee and his attorneys. This $2,210.00 was paid over by the Railroad directly to the United States through the Railroad Retirement Board.

Urban paid $4,639.41 to Plaintiffs as a contingent fee for services rendered by Plaintiffs in securing for him the net recovery of $13,918.25. This net recovery of $13,918.25 is equal to the gross recovery of $16,800.00 less litigation expenses and costs of $671.75 and the $2,210.00 paid by the Railroad directly to the United States through the Railroad Retirement Board.

Plaintiffs allege that in paying over the $2,210.00 to the United States through the Railroad Retirement Board, the Railroad, by reason of an erroneous interpretation of the provisions of the Railroad Retirement Act, failed to deduct from the $2,210.00 the sum of $736.67. This latter sum of $736.67 should have been paid by the Railroad to Plaintiffs rather than to the Board since it represents moneys due Plaintiffs as consideration for services rendered by the Plaintiffs which benefited the United States of America by creating the fund of $2,210.00 for the Railroad Retirement Board. Plaintiffs allege that the reasonable and proper value of these services of benefit to the United States was $736.67.

Demand having been made by Plaintiffs upon the Board for $736.67 and refused by the Board, Plaintiffs filed a Complaint against the United States for the payment over of these moneys. The United States filed a Motion to Dismiss the Complaint alleging that the court lacks jurisdiction over the subject matter, the United States has not consented to be sued in the action and that the Complaint fails to state a claim upon which relief can be granted.

On December 29, 1960 the District Court dismissed Plaintiffs' Complaint for lack of jurisdiction. On November 16, 1961 the Court of Appeals affirmed the District Court.

F. Reasons for Granting the Writ.

1. The Decision of the Court of Appeals on the Jurisdictional Issue Is in Conflict With Decisions of Other Courts of Appeals and of the Court of Claims.

The jurisdictional issue is whether, under the Tucker Act, a Federal District Court may entertain a suit involving the construction of an Act of Congress and seeking to secure payment over from the United States of funds which Plaintiffs contend are legally due them but which were previously paid to the United States under color of the Act of Congress being construed.

Numerous Federal cases support Plaintiffs' contention that Tucker Act jurisdiction exists either if the funds sought by Plaintiffs were paid to the United States under color of an Act of Congress or if the decision of the case involves the construction of such an Act. See: *Gmo. Nichous v. United States*, 153 F. Supp. 428, 432, 139 Ct. Cl. 605 (1957); *Clapp v. United States*, 117 F. Supp. 576, 127 Ct. Cl. 505, *cert. denied*, 348 U. S. 834, 75 S. Ct. 55, 99 L. Ed. 658 (1954); *Eversharp v. United States*, 125 F. Supp. 244, 129 Ct. Cl. 772 (1954), 147 F. Supp. 502, 135 Ct. Cl. 717 (1956); *Kirkendall v. United States*, 31 F. Supp. 766, 90 Ct. Cl. 606 (1940); *Christie Street Commission Co. v. United States*, 136 Fed. 326 (8th Cir. 1905); *Sinclair Navigation Co. v. United States*, 32 F. 2d 90 (5th Cir. 1929); *Carrisa v. United States*, 106 F. 2d 707 (9th Cir. 1939); *Ross Packing Co. v. United States*, 42 F. Supp. 932 (E. D. Wash. 1942); Cf. *Cohens v. Virginia*, 6 Wheat. 264, 379, 5 L. Ed. 257, 285 (1821); *United States v. Rothstein*, 187 Fed. 268 (7th Cir. 1911). The Court of Appeals in the instant case apparently believed that because Plaintiffs' claim requires the application of an equitable principle these cases are inapposite. This equitable principle of propertional contribution is that one who creates a fund which another is to share by way of subrogation is entitled to reasonable compensation for his services out of the subrogated fund. See: *Furia v. City of Philadel-*

phia, 180 Pa. Superior Ct. 50, 118 A. 2d 236 (1955). The Circuit Court thus appears to hold that in order for an Act of Congress to be the basis of Tucker Act jurisdiction such act must by its terms create a cause of action. None of the cases previously cited so requires. In so conditioning Tucker Act jurisdiction the Court of Appeals in the instant case is creating a new principle of law inconsistent with that previously applied by the Court of Claims and by the Courts of Appeals for the Fifth, Seventh, Eighth and Ninth Circuits.

The ruling of the Court of Appeals in this case is not consistent with the trend toward a liberal construction of waivers of sovereign immunity. As the Court stated in *Compagnie General Transatlantique v. United States*, 21 F. 2d 465, 466 (S. D. N. Y. 1927), *aff'd* 26 F. 2d 195 (2d Cir. 1928), "To limit the recovery in cases 'founded' upon a law of Congress to cases where the law provides in terms for a recovery would make the provisions of the Tucker Act almost entirely unavailable, because it would allow recovery only in cases where laws other than the Tucker Act already created a right of recovery. 'Founded' must therefore mean reasonably involving the application of a law of Congress".

2. The Decision of the Court of Appeals Involves Two Important Questions of Federal Law Which Have Not Been But Should Be Settled by This Court.

(a) The Jurisdictional Question.

This Court has never considered the applicability of the "Act of Congress" jurisdictional criteria of the Tucker Act to a claim involving the application of an equitable principle. This Court has construed the term "contract" as used in the Tucker Act jurisdictional criteria not to include those equitable claims that are sometimes characterized as being "contracts implied in law." It is significant that the earlier cases so limiting the application of the term

"contract" as a criterion of Tucker Act jurisdiction developed out of attempts by claimants to characterize tort claims as involving an "implied in law contract" to circumvent the clear intention of the Tucker Act that the United States should not be subject thereunder to tort liability.

This Court and lower Federal courts have on numerous occasions recognized the validity of equitable principles as a basis of claim against the United States. *United States v. State Bank*, 96 U. S. 30, 24 L. Ed. 647 (1877); *United States v. MacDaniel*, 32 U. S. (7 Peters) 1, 8 L. Ed. 587 (1833); *Clark v. United States*, 95 U. S. 539, 24 L. Ed. 518 (1877). In *United States v. Lawson*, 101 U. S. 164, 169, 25 L. Ed. 860 (1879) in affirming the award by the Court of Claims repaying monies to a Collector of Customs that he had previously paid into the Treasury of the United States but that were rightfully his to keep, the Court stated that in equity and good conscience the monies that were wrongfully exacted should be repaid by the government.

The term "founded upon" as used in the Tucker Act should not be confused with the term "arising under" as used in the Judicial Code "Federal Question" jurisdictional articulation. The rationale underlying the various cases limiting the scope of the term "arising under" in the latter context has no application to a determination of the scope of the Tucker Act waiver of sovereign immunity. The only rational correlation of the various cases pertaining to the meaning of the term "arising under" is that the meaning of the term varies with the context.[1]

Plaintiffs here contend that the equitable principle of proportional contribution must be the basis of a construction

1. See Mishkin, *The Federal "Question" in the District Courts*, 53 COLUM. L. REV. 157, 163 (1953). (To ascribe the same meaning to the term "arising under" in various contexts "merely because the terminology is the same, would be to allow form to eclipse problems of substance"); *National Mutual Insurance Co. v. Tidewater Transfer Co.*, 337 U. S. 582, 613-615, 69 Sup. Ct. 1173, 1188-1189 (1949). Chadbourn and Levin, *Original Jurisdiction of Federal Questions*, 90 U. PA. L. REV. 639 (1942).

of the subrogation provisions of the RUIA. The issue raised by the instant litigation involves the manner of application of the right of subrogation—remedial details. The Court must in the instant litigation give form to the Congressional declaration of the propriety of subrogation. The instant litigation thus involves a dispute respecting the construction and effect of § 12(o) of the RUIA, and, consistent with the cases cited in the previous portion of this brief in regard to the jurisdictional issue, this Court should find that there is jurisdiction in the District Court to adjudicate Plaintiffs' claim.

(b) The Substantive Question.

The substantive issue of this case is whether a portion of the funds paid the Railroad Retirement Board should properly have been paid to Plaintiffs rather than to the Board. The determination of this issue requires an interpretation of Section 12(o) of the Railroad Unemployment Insurance Act (RUIA). Plaintiffs contend that although Congress set forth in Section 12(o) the general principle that there should be subrogation, it left the manner of application of this principle to the courts to be developed consistent with well established principles which include the proportional imposition of equitable charges against the subrogated fund. The Court of Appeals appears to have based its determination on the theory that the payment sought by Plaintiffs would be proper only if it were specifically authorized by statute. Plaintiffs do not seek a redrafting or "tinkering" with the provisions of the Railroad Unemployment Insurance Act. Plaintiffs merely ask that in filling the interstices in the statute the Courts apply established equitable principles. In an analogous situation the Court of Appeals for the Fifth Circuit in *Voris v. Gulf Tide Stevedores*, 211 F. 2d 549 (5th Cir. 1954) did just what Plaintiffs seek in this respect when it applied equitable principles to the subrogation required by the Longshoremen's

and Harbor Workers' Compensation Act (LHWCA).[2] In *United States v. Atlantic Coast Line Railroad Company*, 237 F. 2d 137 (4th Cir. 1956) the Court applied the equitable doctrine of exoneration to Section 12(o) of the Railroad Unemployment Insurance Act. In doing so the Court stated, at 237 F. 2d 141, that, "Equitable principles should be applied in enforcing this statute, which in effect creates equitable liens and assignments. . . ." In *United States v. State Bank*, 96 U. S. 30, 24 L. Ed. 647 (1877), this Court acknowledged that it must consider equitable principles as the basis of a claim against the United States. In *Chapman v. Hearst*, 296 U. S. 526, 529 (1936) this Court looked to the equitable principles of suretyship in determining the rights of a subrogated insurer under the LHWCA.

Both the Federal Employees Compensation Act (FECA) referred to by the Court of Appeals and the Longshoremen's and Harbor Workers' Compensation Act involve situations somewhat analogous to that considered by Section 12(o) of the Railroad Unemployment Insurance Act which is here involved. In all three Acts reimbursement is allowed only where there is recovery against a third party. But the FECA and LHWCA are both substantially more articulate and more detailed in considering the manner of subrogation and the rights incident thereto. Section 27 of the FECA establishes a subrogation pattern that varies from that generally applied in other circumstances. Since in the FECA Congress intended such an atypical subrogation pattern it was clearly necessary that it be specifically articulated by the statute as it was. The failure of Congress to be articulate in Section 12(o) of the RUIA requires reference to equitable principles usually applicable to a subrogated fund.

It has always been a cardinal rule of equity to impose the burdens of producing a common recovery proportionately upon those who benefit from the recovery. *Trustees*

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2 *Evans v. Dudley*, 295 F. 2d 713 (3rd Cir. 1961), cited by the Court of Appeals involved an attempt to modify the specific language of the statute and is thus not applicable.

v. Greenough, 105 U. S. 527, 26 L. Ed. 1157 (1882); *Central Railroad v. Pettus*, 113 U. S. 116, 5 Sup. Ct. 387 (1885); *Sprague v. Ticonic National Bank*, 307 U. S. 161, 59 Sup. Ct. 777, 83 L. Ed. 1184 (1939); *Guardian Trust Co. v. Kansas City S. Ry.*, 28 F. 2d 233 (8th Cir. 1928); *Doherty v. Bree*, 262 F. 2d 20 (D. C. Cir. 1958), *cert. denied*, 359 U. S. 934 (1959). Since subrogation is an equitable principle courts have consistently applied the doctrine of proportional contribution in situations involving subrogation analogous to that of the instant case. *Furia v. City of Philadelphia*, 180 Pa. Superior Ct. 50, 118 A. 2d 236 (1955); *Meehan v. City of Philadelphia*, 184 Pa. Superior Ct. 652, 136 A. 2d 178 (1957). The only exceptions to this rule have arisen where a statute specifically provides for a pattern of contribution different from that which would result from the normal application of equitable principles.

The term "to the extent of" as used in 12(a) of the RUA establishes a variable rather than an absolute and is thus declarative of the basic principle of subrogation that the outside limit of recovery is the amount previously advanced by the subrogee. At various stages of the instant litigation the Government has admitted that it does not consider the term "to the extent of" to refer always to the specific amount of the reimbursement even though there is a sufficient fund. It has admitted that it is proper, upon recovery from a third party, for the cost of medical care, hospital and legal expenses to be deducted from the total fund prior to the proceeds being remitted to the Board. The issue not considered by the Court of Appeals is whether it is more consistent with settled principles of statutory construction to permit deduction of expenses, including legal fees, from the total fund even if it will result in reducing the subrogee's interest as the Government suggests, than to permit a pro rata deduction of such expenses as suggested by Plaintiff. Neither method is specifically provided for by the statute. The United States is of course subject to the

same equitable obligations as any other party litigant. *United States v. National City Bank of New York*, 83 F. 2d 236 (2d Cir.), *cert. denied*, 299 U. S. 563 (1936).

Respectfully submitted,

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APPENDIX.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,563

B. NATHANIEL RICHTER AND ELWOOD S. LEVY,
Appellants

v.

UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Argued October 2, 1961

Before GOODRICH, STALEY and SMITH, *Circuit Judges.*

Opinion of the Court.

(Filed November 16, 1961)

By GOODRICH, *Circuit Judge.*

The plaintiffs effected a settlement with a railroad in a Federal Employers' Liability Act case and paid part of the recovery to the United States under statutory provision. They now claim counsel fees against the Government on that part of the settlement paid to it. Plaintiffs lost in the court below. 190 F. Supp. 159 (1960).

The facts are undisputed. The plaintiffs, as lawyers, secured on behalf of an employee of the Pennsylvania Railroad the sum of $16,800. The railroad, in satisfaction of a lien of the Railroad Retirement Board, paid the United

States $2,210. This sum represented the amount of benefits previously paid by the United States to the employee as compensation for disability arising from the accident. The remainder of the settlement was paid to the appellants who, in accordance with a contingent fee arrangement, retained $4,639.41 and turned the remainder over to the injured employee. What the appellants now want from the United States is one-third of what was paid to the Government pursuant to the provisions of the Railroad Unemployment Insurance Act.

The plaintiffs base their claim on the Tucker Act, 28 U. S. C. § 1346(a)(2). This gives a district court jurisdiction in claims against the United States founded upon an act of Congress or upon either express or implied contract with the United States.[1] The argument for the appellants suggests that the district judge denied them relief on the basis that there was no implied contract with the United States within the meaning of the Tucker Act. They now say that this is not the theory of their case at all. In their words, "they depend upon the 'founded upon an Act of Congress' provision of the Tucker Act jurisdictional declarations."

The relevant portion of the Railroad Unemployment Insurance Act provides that the Board is entitled to reimbursement from any damages paid to an employee through suit on or settlement of any liability.[2]

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1. The wording of the subsection is as follows:

"(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

2. Railroad Unemployment Insurance Act § 12(*o*), 45 U. S. C. A. § 362(*o*):

"Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to

The act itself makes no provision for counsel fees for those who effect the recovery for the injured workman. Nor does the act make any statement against counsel fees. The section referred to obviously is to protect the interest of the United States.[3] The plaintiffs say, however, that, even though the act does not provide for an attorney's fee, they should be allowed to recover one either under Pennsylvania law or general federal equity principles. The theory is that the attorney who, by efforts, created the fund should be entitled to reimbursement from the Government on the principle of preventing unjust enrichment. RESTATEMENT, RESTITUTION §§ 1, 105(2).

The minute this argument is made, however, it puts the claim outside the Tucker Act altogether. The claim is then based not upon a statute of the United States, but rather on general equitable principles. There is no basis in the Tucker Act at all for the assertion of these. In spite of the multitude of citations with which we have been deluged, the point seems to us perfectly clear.

Then it is suggested that, even though the act does not expressly provide for attorneys' fees in this case, the appellant should be entitled to a fee. The employee, it is said,

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such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement."

3. The extent of this interest is shown in figures cited to us by government counsel. The Government states that the Board, by virtue of § 12(*o*), has been able to recover almost ten per cent of the sickness and maternity benefits paid out under the Railroad Unemployment Insurance Act. At the end of the fiscal year 1958-59, the cumulative benefits disbursed by the Board totalled $500,000,000, while the total § 12(*o*) reimbursement was $39,294,000.

is the only one who can retain an attorney to benefit both himself and the Board. Therefore, since the employee did so and did benefit both the Board and himself through the lawyer's efforts, the lawyer by proper implication from the act should be paid.

We find no basis for taking any such liberty with the statute. What we are in effect asked to do is to write in a provision which is not there. We think we are no more entitled to redraft the Railroad Unemployment Insurance Act than we are to tinker with a provision in the Internal Revenue Code. *Cf. Evans v. Dudley*, No. 13559, 3d Cir., Nov. 8, 1961. There is nothing in the legislative history to which we are cited that says anything for or against attorneys' fees in this situation. Congress when it desires to make provision for attorneys' fees knows perfectly well how to do so, as it has in the Federal Employees' Compensation Act [4] and an abundance of other situations.[5] It has not done so here and we do not think it a proper subject for court action.

The judgment of the district court will be affirmed.

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4. 5 U. S. C. A. §777 provides that, if a compensable injury creates a legal liability in some person other than the United States and a beneficiary entitled to compensation under the act recovers damages therefor from that other person, the beneficiary "shall, *after deducting costs of suit and a reasonable attorney's fee*, refund the amount of compensation received or to be received from the United States." (Emphasis added.)

5. For example, Congress has made specific provision for the recovery of attorneys' fees in various types of private actions which might be said to be affected with a public interest. See 15 U. S. C. A. § 15 (suits by persons injured by violations of the antitrust laws); 15 U. S. C. A. §77www (suits against persons filing false and misleading statements under the Trust Indenture Act); 49 U. S. C. A. § 16(2) (proceedings to enforce orders of the Interstate Commerce Commission).

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 13,563.

B. NATHANIEL RICHTER AND ELWOOD S. LEVY,
Appellants,

vs.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Present: GOODRICH, STALEY and SMITH, *Circuit Judges.*

Judgment.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Attest:

/s/ IDA O. CRESKOFF,
Ida O. Creskoff,
Clerk.

November 16, 1961